

EXHIBIT E

1 **UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF NEW JERSEY**

3 _____
4 **IN RE: VALSARTAN PRODUCTS**
5 **LIABILITY LITIGATION**

CIVIL ACTION NUMBER:

19-md-02875-RBK-JS

6 _____
7 **CONFERENCE VIA REMOTE**
8 **ZOOM VIDEOCONFERENCE**

9 Mitchell H. Cohen Building & U.S. Courthouse
10 4th & Cooper Streets
11 Camden, New Jersey 08101
12 March 16, 2021
13 Commencing at 11:00 a.m.

14 **B E F O R E:**

**SPECIAL MASTER THE HONORABLE THOMAS
I. VANASKIE**

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8
9
10 **ALSO PRESENT:**

11 Loretta Smith, Esquire

12 Judicial Law Clerk to The Honorable Robert B. Kugler

13 Larry MacStravic, Courtroom Deputy

1 (PROCEEDINGS held via remote Zoom videoconference
2 before Special Master The Honorable Thomas I. Vanaskie at 11:00
3 a.m.)

4 JUDGE VANASKIE: All right. We're all set. We're
5 going to start. I'm going to ask some questions here.

6 The first question I have is, why doesn't the decision
7 I issued on the attorney-client privilege logs requiring cast
8 of characters be presented and that you meet and confer after
9 you get the cast of characters, why shouldn't that be -- why
10 shouldn't that apply here? I'll ask that first of Mr. Slater.

11 MR. SLATER: Thank you, Your Honor.

12 We certainly agree that the cast of characters should
13 be provided. As far as putting off the meet and confer until
14 we get that, we'll do, obviously, whatever Your Honor
15 instructs.

16 One of our concerns is that we have already met and
17 conferred with the defense. They represented they were going
18 to get back to us on multiple questions we had and acknowledged
19 there were certain documents listed in the log that appeared
20 to, from their perspective, to potentially require D
21 designation and then we never heard back. So one of our
22 concerns is that -- we'll certainly meet and confer again and
23 we're happy to talk to the defense again, we just don't want it
24 to go on too long because we're concerned that the meet and
25 confers are not yielding any positive advancement of the

1 process at this point.

2 JUDGE VANASKIE: All right. Thank you.

3 Mr. Goldberg?

4 MR. GOLDBERG: Your Honor, I'm going to, on this
5 question, defer to my colleague, Jessica Priselac, who's been
6 involved in the meet and confers with Mr. Slater and can speak
7 to that specific issue.

8 JUDGE VANASKIE: All right. Thank you.

9 Ms. Priselac.

10 MS. PRISELAC: Thank you, Your Honor.

11 You know, we agree and we're happy to meet and confer.
12 We've actually -- we wrote in our previous papers that we
13 thought the meet-and-confer process was abruptly ended. We're
14 happy to provide a cast of characters to the other side on
15 this. There are very few people, actually, listed on this log,
16 most of whom are already known; but we are happy to provide
17 that list. And we do believe the meet-and-confer process would
18 be helpful to hash out some of these issues and we thought it
19 was abruptly ended, and we would be happy to continue to meet
20 and confer with the plaintiffs.

21 JUDGE VANASKIE: Now, there are only 91 documents
22 involved on this issue, 88 that were completely withheld. I
23 understand that nine of those -- I want to get this right --
24 nine of the 88 the Chinese government asked that they be held
25 confidential.

1 Have those nine documents been identified for the
2 plaintiffs to say these are the ones we must hold as
3 confidential by direction of Chinese authorities?

4 MS. PRISELAC: Yes. Your Honor, in the log, on the
5 description section, where the -- where the document was
6 expressly marked or asked to be held confidential expressly by
7 the Chinese government, those are in the description.

8 JUDGE VANASKIE: Okay. You have to understand, it's a
9 little hard for me to read those descriptions. I'm using the
10 magnifier feature off my iPhone in order to read that text. I
11 certainly can't read it when I print them out, not at normal --
12 normal levels.

13 In the future, it may be that when you provide this
14 information to me you give me the -- maybe I just realized what
15 I should have done. I guess I can copy and paste it and
16 enlarge the text that way.

17 MS. PRISELAC: Actually, Your Honor, we just wanted to
18 make sure because -- in fact, we provided a tremendous amount
19 of metadata so we didn't want to shorten the columns of the
20 actual log, but I totally understand your point. What we can
21 do, even after this, is I can modify the chart such that it
22 just shows the entry number and the description, and that way
23 it should be quite large.

24 JUDGE VANASKIE: Okay, if we need to get there. I'm
25 not sure we need to go that far. Now I'm thinking more in

1 terms of future disputes that involve these logs.

2 So, Mr. Slater, why don't I simply say, ask for ZHP to
3 provide the cast of characters, and then say, confer document
4 by document? And let me go back to those nine documents.

5 Is there any dispute as to those nine documents where
6 the Chinese government has asked that they be held
7 confidential?

8 MR. SLATER: Yes, there is, Your Honor. Starting with
9 those nine -- and I'll even go back further. There were three
10 documents that the log says were produced. I'm having my team
11 actually double-check right now because I had somebody double-
12 check again this morning to make sure, and I was told it looked
13 like slip sheets showing the documents were withheld in their
14 entirety, but we're going to double-check that before we assert
15 that.

16 As far as the documents where the, quote-unquote,
17 Chinese government purportedly said to keep them confidential,
18 I have two thoughts about that: One, we don't know the
19 context; we don't know who it was. Maybe it was a clerk at a
20 window somewhere. We have no idea what the basis was or why
21 that was instructed. And if ZHP is claiming that's some sort
22 of a special status, are they saying as to all the rest of the
23 documents that since they're not saying they were specifically
24 told to keep it confidential that the rest can be produced? So
25 I don't think they can have it both ways. If it has such

1 importance, then the ones they weren't told to keep
2 confidential, according to the log, should all be produced
3 because the government didn't tell them to keep them
4 confidential. If we're going to go with they all should be
5 maintained as confidential under the defense's theory, then I
6 don't think that gives any extra imprimatur or confidentiality
7 to those documents. I don't think they could have it both ways
8 is really my position on that.

9 JUDGE VANASKIE: Well, as I understand, there were 30
10 documents that originated with Chinese authorities, nine of
11 which were asked to be kept confidential. The other 61
12 documents, as I recall, are documents that would have been
13 produced by ZHP but concern, for example, meetings or
14 communications with Chinese government officials and may,
15 therefore, fall within the Chinese state secret law. I'm only
16 saying that because I think there's ways forward here.

17 Let me ask Ms. Priselac now -- and, by the way, yes,
18 the fact that nine were asked to be kept confidential doesn't
19 necessarily mean that the others don't fall within the law. It
20 could mean that; it may not mean that.

21 Ms. Priselac, do you want to respond to Mr. Slater's
22 arguments?

23 MS. PRISELAC: Sure. Thank you, Your Honor.

24 I think you hit the nail on the head and I think it's
25 really detailed in Ms. Yang's declaration, who is a New York

1 barred attorney and is held to the -- is an officer of the
2 Court, State of New York, and she describes in her declaration
3 to the Court that the documents are exactly as how you describe
4 them. There are some that are on their face and expressly
5 requested by the Chinese government to be held confidential,
6 and those are the nine documents of which you spoke.

7 There are 30 documents that directly involve the
8 Chinese government authorities, either information provided or
9 communications directly from Chinese government authorities.

10 The other 61 documents reflect meetings or
11 communications or information that come from the Chinese
12 authorities. And Ms. Yang has detailed in her declaration how
13 the fact that those aren't expressly asked to be held
14 confidential by the government is neither here nor there
15 because the law is very clear in China that they have to be
16 held confidential.

17 JUDGE VANASKIE: All right. Do you want to respond at
18 all, Mr. Slater?

19 MR. SLATER: I think, you know, ultimately, it comes
20 back to our broader challenges to the log, you know, that's
21 where that really takes us, which is the lack of precision, the
22 lack of analysis, the lack, on its face, of this log actually
23 establishing confidentiality. I think saying on a log that
24 somebody in the Chinese -- some arm of the Chinese government
25 asked ZHP or told them to keep something confidential, unless

1 we understand the context, we're not in a position to provide
2 that any significance.

3 And I'll come back, I believe that if they're saying
4 that's the basis, again, they can't have it both ways. If
5 they're saying that's of significance, then the ones they
6 weren't told to keep confidential, I would think, presumably,
7 would have to be produced.

8 JUDGE VANASKIE: That's a logical argument. I
9 understand that.

10 MS. PRISELAC: Your Honor, may I clarify one thing?

11 JUDGE VANASKIE: Go ahead, Ms. Priselac. Certainly.

12 MS. PRISELAC: Of those nine documents -- the nine
13 documents are not documents that someone said had to be held
14 confidential. If you read Ms. Yang's declaration, she states
15 that on their face they're either marked confidential by the
16 Chinese government --

17 JUDGE VANASKIE: Right.

18 MS. PRISELAC: -- or, you know -- it's not that ZHP's
19 saying someone told them to keep them confidential. It's on
20 their face they are marked confidential.

21 JUDGE VANASKIE: All right. Let's get back to the --
22 there is a waiver request pending right now. Can you give me
23 any information about where that stands or who has -- who has
24 been approached to provide the waiver? Who has made the
25 approach on behalf of ZHP?

1 MS. PRISELAC: Sure, Your Honor.

2 And just to step back, ZHP has hired, in total, three
3 law firms to help it address this issue. Two law firms were
4 originally engaged to do a first-level state secret review and
5 then a third law firm, the Hui Zhong law firm, was engaged to
6 do, essentially, a quality check of the first-level review to
7 make sure that the first-level reviewers were -- review law
8 firms were applying the statutes as narrowly as possible so
9 that ZHP could continue to be as transparent as possible in
10 this litigation.

11 So the Hui Zhong law firm conducted a second-level
12 review, which is how we ultimately came down to these 91
13 documents that fell into the Chinese state secrecy law.

14 After they performed that second-level review, we
15 asked them and the client -- our client asked them, what else
16 can we do to try to get these documents produced. They told us
17 that there is a -- that, in theory, you can ask the Chinese
18 government for permission to have these documents produced.
19 There's not a -- you know, a straightforward process because
20 there's a lot of government organs involve; but what they did
21 is they approached the local authorities in Zhejiang province
22 to ask their opinion about how they could go about getting
23 these D designated. At this point in time, they're still
24 trying to figure out exactly -- I'm sorry, Your Honor.

25 (Brief interruption.)

1 MS. PRISELAC: I'm so sorry, Your Honor. That was a
2 building announcement. There is no emergency.

3 JUDGE VANASKIE: Okay, good.

4 MS. PRISELAC: I apologize.

5 JUDGE VANASKIE: That's okay. Unavoidable.

6 MS. PRISELAC: Yes, no emergency, according to them.

7 In any event, Your Honor, they've approached the
8 Chinese authorities, but we want to be very transparent:
9 There's no guarantee the Chinese government will give, you
10 know, approval of these, they don't want to misrepresent that,
11 but they are trying to contact the local authorities and the
12 national authorities. Because if you look on the log, some of
13 these communications are with provincial level and local
14 authorities and some of these logs -- some of these
15 communications are with the national Chinese Food and Drug
16 Administration. So each separate organ has to be approached
17 separately.

18 JUDGE VANASKIE: Okay. Thank you.

19 In the plaintiffs' submission they mentioned several
20 documents by custodian names. Of course, I won't be able to
21 pronounce them, not yet anyway. Well, one I probably can,
22 Sophie Tian's documents, also Jucai Ge's documents, I don't
23 have the page numbers in front of me, unfortunately, but they
24 were specifically mentioned documents that were addressed
25 during the meet -- as I understand it, were addressed during

1 the meet and confer, the 60-minute meet and confer that was
2 conducted in this matter.

3 Where does ZHP stand with respect to the production of
4 those documents?

5 MS. PRISELAC: Your Honor, those documents must be
6 withheld under the Chinese state secret laws. What we did
7 discuss during the meet-and-confer process is they want -- the
8 plaintiffs asked for an understanding of what the basis of the
9 withholding was and we pointed them to those legal -- the last
10 notations we have in the log; and they also had questions about
11 the descriptions, which we discussed. And, frankly, Your
12 Honor, during the meet-and-confer process, the feedback we got,
13 after discussing the basis for the withholding and the
14 description, was that the plaintiffs didn't care if Chinese law
15 did apply, they didn't think it should be enforced in this
16 court and that the description told them that it was clearly
17 relevant to this case.

18 So, you know, after a feedback like that, Your Honor,
19 our position is that it seems to us that the plaintiffs don't
20 want any more description. It's -- the issue they're having is
21 that Chinese law should not apply in this court.

22 JUDGE VANASKIE: All right.

23 Mr. Slater.

24 THE COURT REPORTER: Mr. Slater, you're on mute.

25 MR. SLATER: I was just making sure you were paying

1 attention.

2 Your Honor, your question to counsel was what's the
3 status of the documents we discussed during the meet and
4 confer, which lasted an hour, with five members of our
5 leadership team on the call. We were very interested in
6 hearing what ZHP had to say and we were very interested in
7 talking.

8 I will acknowledge we said we don't think we should go
9 through all 91 documents because at the pace we were going,
10 that would have been hours and everybody -- as you know, we
11 schedule our days and the block of an hour is a lot of time.
12 And we had gone through what we thought were examples of every
13 type of claim of privilege on there and every type of document
14 and said, if there's something that's unique that we're
15 missing, let us know so we'll understand that there's another
16 issue. But we were satisfied that we had, we thought, at that
17 point, put enough on their plate that they would get back to
18 us.

19 The answer is, they never responded, they never got
20 back to us. We were led to believe we were going to get
21 specific substantive information about each of those documents
22 and, in fact, some of the documents appeared to have been sent
23 to witnesses who work in the United States. It looked like
24 some of the documents used outside-of-China servers or email
25 applications. So those seem to us to be, you know, pretty

1 low-hanging fruit, and counsel for ZHP acknowledged, you know,
2 we have to take a look at that, you may be right.

3 So coming back to my concern about the meet-and-confer
4 process being, you know, an obstructive device at this point,
5 it seems a little interesting that ZHP's saying, let's talk
6 more when we never got a response to what we stated then.

7 And I will say, Your Honor, our argument, as you know,
8 has a few different layers to it.

9 At bottom, based on the *Aerospatiale* case, we believe
10 that the public interests are so significant and the relevance
11 to this litigation is likely to be so significant, even based
12 on the little bit of information that's there, talking about
13 announcements of NDMA contamination, quality problems, et
14 cetera, that we should get the documents.

15 So that was our argument at the base, but we don't
16 have enough information from ZHP, frankly, to justify
17 withholding the documents, which was our starting point,
18 because our reading of the law, and we've cited the law to Your
19 Honor, and we think the *Wultz* case in the Southern District of
20 New York is a very instructive case, that says, look, you have
21 the burden if you want to assert a privilege, and you have to
22 meet that burden with the information you provide in your log.
23 A privilege log is not a simple administrative device, it's not
24 just supposed to be a list; it's supposed to actually
25 demonstrate, to someone who reads it, this is why the documents

1 should not be produced. And if a party decides to give cursory
2 or summary type of information, they do so, we believe, at
3 their own peril, because, especially in this case where time
4 marches very quickly and where a week is very significant, and
5 where -- and I think this is important, we challenged the first
6 log that came to us at the end of December. And I want to make
7 sure that's not lost on Your Honor. We challenged the log and
8 what we got back at the end of January was an updated log that
9 deleted, I believe, hundreds of entries and added some
10 information but not a lot of information.

11 So there has already been a meet-and-confer process
12 going on since December where ZHP has modified the log to some
13 extent but, from our perspective, not enough. So from our
14 perspective, the log, on its face, doesn't justify withholding
15 the documents. I understand that there may be a process where
16 they can have an opportunity to try to beef up or make more
17 specific descriptions and actually give the type of precision
18 that the *Chao* case from the Third Circuit talks about where you
19 actually say, this is the provision that matters and this is
20 why the document is being withheld. You know, certainly, I
21 couldn't jump up and down a lot if Your Honor said, I'm going
22 to give one more chance on that, but, you know, on its face,
23 the log does not justify withholding, we believe, anything.

24 JUDGE VANASKIE: Ms. Priselac?

25 MS. PRISELAC: Thank you, Your Honor.

1 First, I want to make the point that this is not a
2 privilege log. And so a lot of the analyses that Mr. Slater's
3 trying to make and the comparisons to the case law about
4 privilege logs are just inapplicable here. The standards that
5 are set forth in the *Aerospatiale* case is what matters here.

6 Now, in order to get to that point of being able to
7 make an argument about the *Aerospatiale* factors, we agreed, and
8 Judge Schneider agreed with our approach, that we would, in the
9 first instance, provide this log that includes the state
10 secrecy privilege and its claims.

11 And I'm glad Mr. Slater brought up the *Wultz* case
12 because the *Wultz* case they cited is very interesting. In that
13 case it was about the Bank of China claiming certain attorney-
14 client privileges; but if you look at Page 484 of that case,
15 Judge Scheindlin is clear that in a previous order she actually
16 let the Bank of China withhold a huge number of documents on
17 state secrecy privilege. So the *Wultz* case really, that they
18 have cited, actually just proves our point that attorney-client
19 privilege and state secret privilege are very different.

20 Your Honor, in terms of the actual sufficiency of the
21 log, we think it's pretty clear in that, essentially, the
22 plaintiffs have admitted by making their argument under
23 *Aerospatiale* that there is sufficient information on the log to
24 have it -- for us to have proven, especially now with Ms.
25 Yang's declaration, that these documents fall within the state

1 secrecy provisions of the Chinese government's laws.

2 And so now the question is whether those laws should
3 be upheld in this court, not whether our log is sufficient or
4 not.

5 JUDGE VANASKIE: Yes, I'm concerned about litigation
6 over the adequacy of the log because that oftentimes just
7 results in more delay. You get a new log and that log's not
8 sufficiently precise. And I'm very reluctant to order
9 production on a waiver basis, that is, that you had several
10 opportunities to provide a better description and you didn't do
11 it because what might be sufficient could be in the eye of the
12 beholder.

13 MS. PRISELAC: Your Honor, can I -- I'm sorry. Can I
14 make one point on that?

15 JUDGE VANASKIE: Certainly, you may.

16 MS. PRISELAC: I do want to stress that -- and this
17 goes back to our client's efforts to really narrow, right, the
18 number of documents that it was withholding on that basis.
19 After the plaintiffs made their first challenge to our log is
20 when our client went and hired a third Chinese law firm to do a
21 quality check of the first-level review, and that's set forth
22 in Ms. Yang's declaration, and they attempted to apply these
23 laws as narrowly as possible which got us down to only 91
24 documents. I mean, that's less than one-tenth of one percent
25 of what's been produced here. And at this point -- and we also

1 went back and gave them even more, like, pin sites to the
2 Chinese regulation rather than the overall regulation and we
3 beefed up the description.

4 So we have been making a good-faith effort since they
5 first raised this in December and I don't want that to be lost
6 on the Court.

7 JUDGE VANASKIE: There were some of the documents, and
8 I think Mr. Slater mentioned this in his argument today, but it
9 was also mentioned in the letter that was sent to me, the
10 letter brief, Document 1011, and that is that some of these
11 documents were distributed outside China. They may have all
12 originated in China but they were distributed outside China.
13 Why shouldn't those documents be ordered to be produced?

14 MS. PRISELAC: Yes, Your Honor.

15 So I believe it's five documents that went to one of
16 ZHP's U.S. subsidiaries, which Huahai Pharma US. The two
17 employees to which those emails went to resigned and those two
18 employees are no longer with the company. I still have to get
19 the final date of their employment with Huahai US, but they are
20 no longer with the company so copies of those emails no longer
21 exist on a Huahai US server. So they would have to be
22 collected, and they were collected, in China, right, which is
23 the reason they're actually on this log is because they were
24 collected in China; but we don't have an ability to collect
25 them from the U.S. And I've asked our vendor and our client to

1 see if any of those -- copies of those documents exist
2 somewhere else in the United States. So far they haven't been
3 able to locate them and it's primarily because these two
4 employees no longer work for that company.

5 MR. SLATER: I mean, Your Honor, that answers the
6 question. If the documents were sent to the U.S., they should
7 be produced. I mean, I don't understand this argument about --
8 I mean, we have concerns about why the documents no longer
9 exist, I guess we can get to that, in the U.S. and why they
10 weren't held, I guess we can look at the timing of that
11 description, but certainly if they were allowed to leave the
12 Chinese -- if they were allowed to leave China and be sent to
13 the U.S., there's no argument to keep those and they should be
14 produced immediately.

15 MS. PRISELAC: Well, Your Honor, that's not what
16 *Aerospatiale* says. It does say where they're collected, where
17 they originated, and where they currently reside are important
18 factors, and in this case all three of those are in China.

19 JUDGE VANASKIE: Now, we know it's 91 documents. How
20 many pages of documents are we talking about?

21 MS. PRISELAC: Your Honor, I do not have a page count
22 but I can provide that to you. I can get that in the next few
23 days and provide it to you.

24 JUDGE VANASKIE: Okay. How long will it take you to
25 provide the cast of characters information?

1 MS. PRISELAC: I can have that tomorrow by the end of
2 the day, Your Honor.

3 JUDGE VANASKIE: Okay. All right. So I'll direct
4 that that be produced. I think that's consistent with what
5 we've already decided.

6 You know, to some extent, I'm wondering whether this
7 Chinese state secrecy laws are akin to what's called the
8 deliberative process privilege here in the United States
9 dealing with information considered by government agencies when
10 they're promulgating rules and things like that. That's
11 neither here nor there, I guess, because we have to look at the
12 Chinese law, but it seems to me to be very much akin to that
13 and that's a qualified privilege, not an absolute privilege.
14 This seems to be similar here, when we look at the *Aerospatiale*
15 factors that need to be taken into account.

16 You know, I'm coming to the conclusion that we can do
17 one of a few things. Number one, that cast of characters
18 information needs to be provided and, Mr. Slater, you can
19 decide, based upon now the receipt of the cast of characters
20 information, whether you would not want to pursue challenges to
21 specific documents because of the title or position of the
22 people involved in the matter. You may still want to pursue
23 all 91.

24 I'm debating whether to require you to go meet and
25 confer on all 91 with a court reporter present so that a record

1 is made of the discussions that you have that you could then
2 present to me, hopefully on a document-by-document but it might
3 be all 91, that I then have a more adequate basis. I'm
4 concerned about going back and forth on privilege logs, and I'm
5 anticipating that the dialogue that you would have would
6 provide more complete information. I'm not saying the logs are
7 inadequate, I'm not saying that at all; but you could have --
8 to me, it might be the most efficient way and the most
9 expeditious way to move this matter forward. And then if there
10 are still remaining documents that you want that you claim
11 should not be subject to the Chinese state secrecy law, or more
12 particularly and more precisely, but under the *Aerospatiale* and
13 *Richmark* factors, they should be produced nonetheless, we can
14 look at them on a document-by-document basis.

15 What do you think about that approach?

16 MR. SLATER: Your Honor, it's interesting, I actually
17 thought about that, about potentially documenting our
18 discussions, and the conclusion I came to on that is this, and
19 it's sort of -- it's what I was saying earlier, that you can't
20 substitute a meet and confer or substitute a brief or
21 substitute an argument to the Court for the privilege log as
22 it's supposed to exist to begin with. So I think, ultimately,
23 what that would do is substitute the defendant's obligation to
24 provide the type of information we're asking for, which is,
25 identify the specific provision in the Chinese state secret

1 law, identify the specific information in the document that
2 falls within it, tell us that analysis so we understand exactly
3 what you're saying, as opposed to citing seven sections of
4 various laws; and then when we have that information, then I
5 think we could have that type of a discussion. But I think
6 that, to some extent, it's not fair to us if we have to -- if
7 we get to go -- if we go to a meet and confer and it's at that
8 point that the defense unloads all of this information on us
9 that should be in the log. If they know it now, if they could
10 provide it in a meet and confer, in terms of the specificity of
11 why they say a document should be withheld, I think that the
12 law requires them and behooves them to provide that information
13 in the log because, again, a log is not just a list, it's
14 supposed to substantively justify the withholding.

15 So I would ask that the defense, if we're going to do
16 that, provide that type of analysis to specific provisions and
17 the specific parts of the documents that trigger them, and then
18 we could sit down and talk to them. But I'm concerned, the
19 call that you're talking about, I would say, you know, round
20 numbers, you're talking probably four hours of time of people
21 sitting there and going back through all these documents
22 because there's going to be back and forth and we're going to
23 ask questions and we're going to ask for more and it'll end up
24 being a massive transcript, where I think that 90 percent of
25 that information could be put in more efficiently if it's put

1 into the log. And if ZHP has this information, there's no
2 reason why they wouldn't provide it now because that would
3 actually be more compelling for their own argument to be able
4 to show Your Honor, here's our log, here's our explanations.
5 Because I think right now if you look at the log, there's no
6 way to understand why is a specific document protected. It's,
7 well, we say it is because there's seven different laws that
8 apply to it and it generally talks about X, Y, Z.

9 And the descriptions, the last thing I'll say, when
10 counsel says we're not -- we're not arguing that we need more
11 fulsome descriptions and that's why we went to *Aerospatiale*,
12 look, you have to argue each level, but the little bit of
13 information that's there is obviously -- the announcement of
14 NDMA in valsartan, that's a bunch of documents; exemption of
15 products, I don't know what that means. There's another one
16 that says, summary of the reports provided to the authorities,
17 that's information they can be providing in the log. We don't
18 know what reports, which authorities, what about, what's the
19 subject matter of those reports. There's another one that
20 says, a report to the Taizhou municipal government regarding
21 public sentiment. I think that they can provide a lot more
22 information on that. There's another one that says, and this
23 is Document 69 -- the last one I said was 67. 68 and 69 speak
24 to the valsartan event.

25 So I think that, at this point, it would be, I think,

1 somewhat of an unfair burden if we have to sit there and spend
2 hours and hours while the defense just, basically, will tell
3 us, in boilerplate fashion, these documents are covered by
4 these laws, this is what's addressed, and I think we'll end up
5 here; whereas, if they're given an opportunity to try to make
6 their fulsome production of information in their log, then I
7 think Your Honor will be in a much better place and we'll be in
8 a much better place to know exactly what we're dealing with.

9 JUDGE VANASKIE: All right. Ms. Priselac?

10 MS. PRISELAC: Thank you, Your Honor.

11 You know, we think the log is sufficient and I think
12 that your idea is a good one. What we could do, because our
13 law firm in China is really the only group of people who can
14 see these documents, right, you know, Mr. Goldberg and I can't,
15 that if we had them on the law firm [sic], as long as whoever
16 is advising plaintiffs' group on Chinese law is on the phone,
17 we could probably make a tremendous amount of progress because
18 when I did try to discuss the Chinese laws with plaintiffs'
19 counsel, whoever is advising them on Chinese law was not on the
20 phone and I, you know, at -- I pretty succinctly pointed
21 exactly to the laws, and they are on the log, that apply and
22 just because seven laws apply doesn't mean our description
23 isn't fulsome. It means it's actually quite fulsome if seven
24 different laws apply. So that's on that point.

25 So we'd be happy to do a meet and confer on the

1 record, just as you suggested, with our Chinese law firm on the
2 phone and we'd hope that their Chinese law advisor would also
3 be on the phone.

4 I would also say, Your Honor, too, that, you know, Mr.
5 Slater keeps talking about urgency and there's really no
6 urgency here. And here's why, is that we're talking about 91
7 documents. Plaintiffs have millions and millions of documents
8 about the who, what, where, why all of this happened. If we
9 took our time and actually did go through the meet-and-confer
10 process, the *Aerospatiale* analysis, typically these cases and
11 these decisions involved expert opinions, if we did go through
12 that entire process, while at the same time our client is
13 trying to get permission from the Chinese government to get
14 these documents produced or some of them produced, if we even
15 ended up a year from now with these documents being produced,
16 Judge Kugler has said that this case isn't going to trial for
17 probably three years or more. So if those documents did become
18 available and were produced at a later date, of course we'd be
19 happy to provide a 30(b)(6) to address them at that time. But
20 right now this faux sense of urgency I don't think should force
21 us into compressing this process on that, you know -- and many
22 of the cases, you know, takes months and months to decide
23 because of the complex comity issues and the fact that expert
24 opinion is often needed in these cases.

25 JUDGE VANASKIE: Well, I have to disagree with one

1 thing you said, Ms. Priselac, and that is a sense of urgency.
2 I think there is a sense of urgency with respect to getting
3 these matters resolved. I know trial's not on the horizon but
4 there is an order in place now that calls for completion of
5 discovery in a relatively short timeframe and the documents may
6 be relevant to the depositions that are occurring, and I do --
7 and I just feel that there's this need to get it resolved.

8 Now maybe, Mr. Slater, you agree with Ms. Priselac and
9 we don't have to give it this urgency that I feel I should.

10 MR. SLATER: No, Judge, I think there is a need to get
11 these issues addressed now, I think, for a lot of reasons.
12 This is when we're taking the depositions, this is when the
13 record is being made for our experts, this is when the record
14 is being made for dispositive motions, Daubert motions, et
15 cetera, and my understanding has been that the Court expects us
16 to get this work done now.

17 JUDGE VANASKIE: Right. Well, I'm looking for the
18 most efficient way, the most expeditious way to get this done
19 and I think you can tell from the comments I've had I'm not a
20 -- you know, I've been down the road with privilege logs before
21 and the back and forth on privilege logs can be more time
22 consuming without yielding any beneficial result.

23 So what I'm going to do is by the end of business
24 tomorrow, or maybe it's 11:59 p.m. tomorrow, the cast of
25 characters is to be provided for these 91 documents, and then

1 I'm going to direct that you meet and confer with a court
2 reporter present and make a record, either document by document
3 or category by category, and then you certainly, Mr. Slater,
4 will have the opportunity to -- and we'll do it on an expedited
5 basis -- move to compel all or some of the documents, and,
6 Ms. Priselac, you'll certainly have an opportunity to respond
7 to that.

8 At that point in time we'll be beyond the log issue.
9 I'm making it clear that I'm not going to find that a privilege
10 or certainly a state secret privilege has been waived because
11 the log was, quote-unquote, inadequate. We're going to apply
12 the *Aerospatiale* and *Richmark* factors, because I think the
13 *Richmark* factors are relevant as well, to decide this. And
14 if -- you know, I know that means likely *in camera* review but
15 sometimes that's the only way this can get accomplished. I'm
16 hopeful that in your meet and confer that there will be
17 agreements to produce some documents and there will be
18 decisions not to pursue some documents, but I am also realistic
19 to know that it's likely that I'll have 91 documents to review.
20 That's why I was asking how many pages are we talking about.

21 MS. PRISELAC: Your Honor, if I could clarify, and I
22 think this is one of the reasons, you know, expert opinions are
23 often used in these cases from the country of origin of the
24 documents is that our client is completely prohibited from
25 giving these documents even to Duane, Morris's attorneys. They

1 cannot be shared outside of the United States, so that would
2 prohibit an *in camera* review.

3 JUDGE VANASKIE: Oh, interesting.

4 MR. SLATER: Yeah, we disagree, Your Honor.
5 Obviously, that's what *Aerospatiale* says; and it says if the
6 Court decides the documents are to be produced, that,
7 ultimately, United States law controls.

8 MS. PRISELAC: Well, I don't think that *Aerospatiale*
9 says that if a foreign blocking statute blocks the production
10 of the documents to the United States that there has to be an
11 *in camera* review.

12 JUDGE VANASKIE: But I could go to China and review
13 them? I'm not proposing that.

14 MR. SLATER: I mean, that's a pretty radical
15 interpretation, from our perspective.

16 MS. PRISELAC: Well, Your Honor, it's not radical.
17 Actually, I think in all of the cases, including the *Wultz* case
18 that Mr. Slater cited, actually a Chinese law expert who was
19 located in China and had the proper Chinese bar was the person
20 who submitted a declaration who had personally reviewed the
21 documents and submitted that declaration to the Court because
22 they could not be reviewed by the Court.

23 JUDGE VANASKIE: Okay. I'll look for more authority
24 on that, I suppose.

25 MR. SLATER: Your Honor, can I request a little

1 guidance on one issue --

2 JUDGE VANASKIE: Certainly.

3 MR. SLATER: -- so the meet and confer can move as
4 efficiently as possible?

5 In our past meet and confers with ZHP's counsel,
6 there's been a pretty consistent refrain of, counsel, you're
7 not deposing us, we're the lawyers, you're not deposing us. I
8 just would like to dispel that before the call because there's
9 no point in us getting into the call if there's going to be a
10 dispute. It's -- from what you're directing, I would think
11 that we are going to be asking questions of counsel and that we
12 should expect substantive information and responses. It's the
13 only way for us to get the information. I just would like to
14 avoid that type of a baseline dispute because I think that's
15 what Your Honor intends.

16 JUDGE VANASKIE: It is what I intend. I don't know
17 how you can gather the information that you feel you need to
18 make a document-by-document assessment of what may be and what
19 may not be protected by the state secret privilege without
20 asking those questions and counsel answer. They're not under
21 oath. And if they don't have answers, they don't have answers.
22 But that's the only way it can occur.

23 I expect they can ask you questions back, in terms of,
24 you know, why are these documents vital to your pursuit of your
25 claims? That certainly is a factor that needs to be taken into

1 account. I would expect there might be inquiries about why
2 aren't the documents that went to the FDA sufficient for you to
3 move forward?

4 So I'm just saying I think it's a two-way street. It
5 is a meet and confer, and that's how I'd expect it to go
6 forward.

7 MR. SLATER: Thank you for that guidance. I agree.
8 Thank you.

9 JUDGE VANASKIE: All right.

10 MS. PRISELAC: Your Honor, can I also ask that you
11 order that whoever is advising the plaintiffs on Chinese law be
12 present during the meet and confer as we'll have our Chinese
13 law firm on the phone.

14 JUDGE VANASKIE: All right. Mr. Slater, is that
15 possible? Do you have somebody?

16 MR. SLATER: I mean, I would think that to some extent
17 it's work product, but if Your Honor wants me to answer the
18 question, I'll answer it right now.

19 JUDGE VANASKIE: I want you to answer the question.

20 MR. SLATER: We're not being advised by any outside
21 lawyers. We think that our team of leadership can read the
22 state secret laws, read the case law and understand what it
23 means. If we determine to retain somebody, we will and we'll
24 bring them to the call.

25 JUDGE VANASKIE: Very well. Thank you.

1 How quickly -- I know you have to confer with your
2 teams, but if I was to direct that the meet and confer occur by
3 next Friday, the 26th of March, is that impossible?

4 MR. SLATER: No. We would make it happen because we
5 think it should happen quickly.

6 JUDGE VANASKIE: Ms. Priselac?

7 MR. GOLDBERG: Your Honor --

8 JUDGE VANASKIE: Mr. Goldberg?

9 MR. GOLDBERG: Yes, Your Honor. I think that under
10 the -- there's a deposition that's scheduled for next week. It
11 starts on Sunday evening, U.S. time, and it will be every
12 evening -- it's scheduled to be every evening Sunday through
13 Thursday of next week. Certainly Ms. Priselac will be occupied
14 for that entire time, as she is involved in defending that
15 deposition. So we would ask that, at a minimum, Your Honor set
16 the meet and confer for the following week. I don't know what
17 the dates would be, but looking at my calendar, the week of --
18 early the week of March 29th.

19 MR. SLATER: Your Honor, I'm not understanding. The
20 depositions take place at night. There's a deposition the
21 following week. I'll be taking that deposition. I'm not
22 taking the deposition next week; Ms. Hilton is. It's not that
23 there's a better week or not. And the depositions are going to
24 take place at night; this meet and confer is going to take
25 place, I would assume, during normal business hours here so

1 that we can, you know, have a -- have our team on the call. So
2 I don't understand why we would say it can't happen. I mean,
3 we're ready to do it as early as this Friday or Tuesday,
4 Wednesday after the conference we can do it. I mean, we want
5 to do this quickly. We're not looking to drag this out.

6 JUDGE VANASKIE: Yes.

7 MR. SLATER: Counsel wants to push it a couple weeks.

8 MR. GOLDBERG: I appreciate that. As counsel knows,
9 we are dealing with a 12-hour time difference. We intend to
10 have the Hui Zhong law firm on this call because they have
11 reviewed the documents and they have the information about the
12 Chinese state secret laws. Given the time zone difference, we
13 are doing depositions in the evening, business -- during
14 business hours China time. What Mr. Slater's proposing is that
15 we would do this business hours U.S. time, after-hours China
16 time.

17 We can certainly discuss with the Hui Zhong law firm
18 their availability next week, but the following week
19 Ms. Priselac will be available during the evenings here and
20 business time in China. But we can work with plaintiffs on
21 finding a time but it is essential, in our view, that the Hui
22 Zhong law firm be able to attend because they're the only ones
23 who have seen these documents. So that's something Your Honor
24 should consider in scheduling this meet and confer.

25 JUDGE VANASKIE: Well, it seems to me, correct me if

1 I'm wrong, you will correct me if I'm wrong, that it could be
2 done on March 26 but in the evening. The deposition will be
3 concluded March 25th.

4 MR. GOLDBERG: Correct, Your Honor.

5 JUDGE VANASKIE: I know it puts, you know -- but this
6 is an important matter, I know.

7 What about that, Mr. Slater, that I direct it be
8 completed by March 26? You have to agree on a time. The time
9 could be in the evening or late afternoon.

10 MR. SLATER: That's fine. We'll work it out. I would
11 think that the firm in China that's assisting ZHP's counsel
12 will make itself available when this gets scheduled and we'll
13 try to find an agreeable time. I really hope we don't have to
14 contact Your Honor to schedule a call.

15 JUDGE VANASKIE: Yes, me too. Me too. But I'm going
16 to direct that it be completed by March 26, the meet and
17 confer, and the cast of characters by end of day tomorrow. And
18 then I expect that you'll send me a status report early the
19 following week, hopefully by Monday, and I'll get back to you,
20 okay, in terms of moving this matter along. I know there are a
21 lot of other issues that need to be moved along.

22 I've engaged the assistance of an associate in my
23 firm. I've been doing this all myself so far, but I think I
24 need to get decisions out, so I wanted to let you know that I
25 am utilizing assistance now and you will be -- you know,

1 hopefully things will move a little bit faster.

2 MR. SLATER: It's been going fast from our
3 perspective, so we have no complaints, Judge.

4 JUDGE VANASKIE: I'm glad to hear that. I was
5 concerned about that.

6 What about from the defense perspective? Because I
7 don't -- you know, I don't want to cause unnecessary expense
8 either, so if you prefer me to look at everything, I'll look at
9 everything and--

10 MR. SLATER: From the plaintiffs' perspective,
11 whatever you think is most efficacious for you. Our primary
12 interest is moving things forward, so whatever you think is
13 easiest or best for you --

14 JUDGE VANASKIE: Yes.

15 MR. SLATER: -- we support.

16 JUDGE VANASKIE: Yes. I can make decisions fast but
17 I'm not as fast a writer as I used to be.

18 Anything else?

19 MR. SLATER: No, Your Honor, not from plaintiffs.

20 MR. GOLDBERG: Nothing from the defense, Your Honor.

21 JUDGE VANASKIE: Oh, there is one more issue, and that
22 was something that you requested, Mr. Slater, and that deals
23 with prohibiting objections on the basis of the state secret
24 privilege at depositions that don't concern any of the
25 documents withheld on the basis of the state secret privilege.

1 MR. SLATER: Thank you, Your Honor. I forgot about
2 that. Thank you, Your Honor.

3 JUDGE VANASKIE: All right.

4 MS. PRISELAC: Your Honor?

5 JUDGE VANASKIE: Go ahead, Ms. Priselac.

6 MS. PRISELAC: Well, Your Honor, we would oppose that
7 because, obviously, an attorney can ask a question that
8 implicates the state secret privilege even if it isn't in a
9 document on this log.

10 MR. SLATER: Well, I have to jump in now and give a
11 little history then.

12 We raised this issue originally, specifically with
13 this issue, Your Honor, where we wanted to block ZHP from
14 asserting state secret privilege objections during the
15 depositions and we wanted to have the issue briefed months and
16 months ago with Judge Schneider, and what Judge Schneider
17 resolved was this: He said, look -- because ZHP said they were
18 going to be serving a log of, quote-unquote, privileged
19 documents, and what Judge Schneider ruled was, okay, this is
20 how we'll handle it: ZHP, serve your log, then we'll have a
21 context. And in that context we can then litigate the question
22 of whether or not there's actually a viable privilege to
23 protect these documents and actually stated on the record that,
24 and we actually covered this, that if something's -- for
25 example, if there were no documents, then there would be no

1 state secret privilege issue. And if there were a few
2 documents, it would relate only to those documents. So I don't
3 have that transcript at my fingertips. If necessary, we could
4 get it to Your Honor. But that is how this went down. And
5 then we ended up in this process which started in December when
6 we got the first log and went forward.

7 So that was how Judge Schneider ruled and then handed,
8 obviously, the plate off to Your Honor.

9 JUDGE VANASKIE: All right. Well, it would be helpful
10 if you provided that transcript to me so that I can take a look
11 at it. It is a little bit difficult --

12 MR. SLATER: I will.

13 JUDGE VANASKIE: Thank you for that, Mr. Slater.

14 It is a little bit difficult for me to rule on this
15 issue sort of in a vacuum, but I certainly understand --

16 MS. PRISELAC: Your Honor?

17 JUDGE VANASKIE: -- I understand your position.

18 Go ahead, Ms. Priselac.

19 MS. PRISELAC: Your Honor, I would respectfully
20 disagree with Mr. Slater's characterization of the record.
21 Judge Schneider made it clear, time and time again, and we can
22 also provide you with those transcripts that says that these
23 issues would be handled, like a privilege objection at a
24 deposition, at which time we could either call His Honor or now
25 Your Honor or we could make a motion after the deposition, and

1 that's how it was to be handled.

2 MR. GOLDBERG: Your Honor, the reality is --

3 JUDGE VANASKIE: Go ahead, Mr. Goldberg.

4 MR. GOLDBERG: -- the reality is, and this was -- this
5 was clear to Judge Schneider and it's clear in the transcripts,
6 which is why he ruled that way, there's no way to know what
7 questions the plaintiffs' counsel will ask at a deposition.
8 There's no way to know whether they will ask a question that
9 could put a witness in the position of having to reveal state
10 secret information. We think it's unlikely. And the fact that
11 only 91 of more than 270,000 documents have been produced has
12 been withheld on the basis of state secret I think perforce
13 shows that it's unlikely. However, should plaintiffs' counsel
14 ask a question, did you discuss this with a Chinese regulatory
15 authority, of course, we would need to state the objection or
16 state -- you know, state the objection and assert the
17 privilege. And that's how it works in these cases, just as it
18 does with the documents. If there's testimony that is called
19 for and that -- or a question that would result in the
20 disclosure of a Chinese state secret, the objection is made,
21 the privilege is asserted, and the Court would then rule on
22 that line of questioning and that privilege but would not
23 require the witness to first disclose the state secret and
24 subject the witness to possible criminal penalties.

25 JUDGE VANASKIE: Have there been any objections thus

1 far at any of the depositions based upon the state secret
2 privilege?

3 MR. GOLDBERG: No, there have not. And we would
4 expect it to be very -- I would just stand on the fact that
5 because of the very small, small number of documents that have
6 been identified as potentially state secret, we think it's
7 unlikely that this issue will come up at a deposition; but we
8 absolutely need, and as we said to Judge Schneider, absolutely
9 need to reserve the right and have the ability so that our
10 witnesses are not testifying under the specter of criminal
11 sanctions.

12 JUDGE VANASKIE: I did have in my notes, and I do want
13 to say this, that I am favorably impressed by the level of
14 review that the documents went through. I am favorably
15 impressed by it's only 91 documents but it may be the 91 most
16 important documents from plaintiffs' perspective, it may not
17 be. But at least it shows that you're really operating in good
18 faith here and I did want to note that.

19 So, I won't make a prophylactic ruling with respect to
20 whether objections on the basis of the state secret privilege
21 can be lodged. We're just going to have to take it as it comes
22 up.

23 MR. SLATER: Thank you, Your Honor.

24 MR. GOLDBERG: Thank you, Your Honor.

25 JUDGE VANASKIE: Anything else for today?

1 MR. SLATER: At my peril, I'll say no, again.

2 MR. GOLDBERG: Nothing for the ZHP parties.

3 JUDGE VANASKIE: Okay. I won't look at my notes.

4 All right. Thank you all very much.

5 MR. SLATER: Thank you, Your Honor.

6 MS. PRISELAC: Thank you, Your Honor.

7 JUDGE VANASKIE: Bye-bye.

8 MR. GOLDBERG: Bye-bye.

9 (The proceedings concluded at 11:57 a.m.)

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14 I certify that the foregoing is a correct transcript
15 from the record of proceedings in the above-entitled matter.

16

17 /S/ Camille Pedano, CCR, RMR, CRR, CRC, RPR
18 Court Reporter/Transcriber

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19 03/18/2021
20 Date

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